

REMARKS

1. Claims 1-38, 58-67, and 69

The Examiner rejected claims 1-38, 58-67, and 69 as obvious (35 U.S.C. §103) in view of the Background Section (Application, pgs. 1-2) and Johnson (U.S. Patent No. 5,712,989). Applicants traverse.

Independent claim 1 concerns a method for ordering products wherein the products are supplied by a supplier to a replenishment service center (RSC), wherein an acquiring entity obtains products from the RSC by performing a sequence of operations and requires: (i) generating, by the acquiring entity, a request for a quantity of products; (ii) performing computer related operations to update a computerized inventory database with a product record including a requested quantity that the acquiring entity wants to receive of the product based on the generated order; (iii) performing computer related operations, by the acquiring entity, to process a request from the supplier for information on the requested quantity from the product record in the inventory database and transmitting the requested information to the supplier in response to the request; (iv) performing computer related operations to process information from the supplier indicating a commitment quantity of a number of the products the supplier intends to ship to the RSC to meet the requested quantity, wherein the supplier uses the requested information to determine the commitment quantity to indicate; (v) performing computer related operations to update the inventory database with the information received from the supplier to indicate the commitment quantity; (vi) performing computer related operations to update the inventory database from information received from the RSC indicating products shipped from the supplier for one specified product record to satisfy the commitment quantity; and (vii) transmitting, by the acquiring entity, a pull order to the RSC to ship products to the acquiring entity that the supplier shipped to the RSC to satisfy the commitment quantity.

The Examiner found that the Background Section teaches all of the recited sequence of operations and functions, but only has some of these operations performed by a computer. (Fourth Office Action, pg. 3). Applicants traverse.

Nowhere does the cited Background Section disclose or suggest many of the claim requirements, including performing computer related operations, by the acquiring entity, to

process a request from the supplier for information on the requested quantity from the product record in the inventory database and transmitting the requested information to the supplier in response to the request and performing computer related operations to process information from the supplier indicating a commitment quantity of a number of the products the supplier intends to ship to the RSC to meet the requested quantity, wherein the supplier uses the requested information to determine the commitment quantity to indicate.

Applicants request that the Examiner cite to those specific sections of the Background Section that teach or suggest the above requirements concerning receiving information on a supplier received commitment quantity as claimed if the Examiner maintains his findings with respect to the Background Section.

The Examiner found that Johnson discloses a similar method of ordering products as claimed. Johnson discusses a requisition system using host computer 10 located at distributor site and a local computer 40 used by a customer service representative (CSR) at or near the customer site and the inventor. (Johnson, col. 2, lines 61-67). The CSR creates a purchase order at the local computer 40 and transmits this to the host computer 10. In response, the host computer 10 initiates a purchase order program to validate the order, price, etc. and then execute the purchase order.(Johnson, col. 18, line 51 to col. 19, line 30) The host computer 10 then sends a confirmation data block to the local computer 40 if everything checks out and the purchase order can be satisfied. (Johnson, col. 20, lines 1-23)

However, the only section of Johnson the Examiner cited was block 372 in FIG. 5B. (Fourth Office Action, pg. 3) Johnson states that at block 372, the host computer 10 creates a confirmation data block to transmit to local computer 50 to confirm a purchase order. (Johnson, col. 20, lines 1-10). Nowhere does the cited block 372 and corresponding description of Johnson anywhere disclose the combination of requirements of the claims, including that the acquiring entity processes a request from the supplier for information on the requested quantity in a product record and then receives information from the supplier indicating a commitment quantity of a number of the products the supplier intends to ship to an RSC to meet a requested quantity, where the supplier uses the requested information to determine the commitment quantity to indicate. In other words nowhere does the cited Johnson teach or suggest that a supplier requests information on a requested quantity in a product record and then submits a commitment

quantity indicating a number of products the supplier intends to ship using the requested information the supplier previously obtained from the product record. Instead, the cited block 372 of Johnson mentions that a host computer 10 creates confirmation data to transmit to a local computer operated by the customer to confirm a purchase order.

Johnson thus discusses how a customer CSR may submit a purchase order to a host computer at the distributor site and the host computer may confirm the order and send confirmation to the CSR at the local computer. Nowhere does the cited Johnson teach or suggest that a supplier requests information on a requested quantity in a product record and then submits a commitment quantity indicating a number of products the supplier intends to ship using the requested information the supplier previously obtained from the product record. Instead, in the cited Johnson, the supplier or distributor at the host computer returns confirmation in response to a product order.

Moreover, the Examiner has not cited any part of Johnson that teaches or suggests the claim requirements of performing computer related operations to update the inventory database with the information received from the supplier to indicate the commitment quantity; performing computer related operations to update the inventory database from information received from the RSC indicating products shipped from the supplier for one specified product record to satisfy the commitment quantity; and transmitting, by the acquiring entity, a pull order to the RSC to ship products to the acquiring entity that the supplier shipped to the RSC to satisfy the commitment quantity. Instead, the cited block 372 of Johnson discusses how a customer CSR may transmit a product order to a host system to verify and confirm.

Accordingly, independent claim 1 is patentable over the cited art.

Independent claim 13 recites a method for ordering products, wherein the products are supplied by a supplier to a replenishment service center (RSC), wherein an acquiring entity obtains products from the RSC, comprising the supplier performing a sequence of computer related operations comprising: (i) performing computer related operations to access information in computerized inventory database including product records, wherein each product record indicates a specified product and a requested quantity the acquiring entity wants to receive, wherein the inventory data base is capable of being updated from: information received from the acquiring entity to add a product record including a requested quantity that the acquiring entity

wants to receive and information received from the RSC indicating products shipped from the supplier for one specified product record; (ii) performing computer related operations to determine from the accessed information the requested quantity for one product record; and (iii) performing computer related operations to update one product record in the inventory database indicating a commitment quantity of a number of the products the supplier intends to ship to the RSC to meet the requested quantity determined from the accessed information, wherein the supplier uses the accessed information to determine the commitment quantity to indicate.

Applicants amended claim 13 to remove correct minor errors.

Independent claim 13 includes many of the requirements of claim 1 that distinguish over the cited combination of the Background Section and Johnson, including that the supplier perform computer related operations to access information in a computerized inventory database including product records, wherein each product record indicates a specified product and a requested quantity the acquiring entity wants to receive. Claim 13 further includes the distinguishing requirement that the supplier determine from the accessed information the requested quantity for one product record and update one product record in the inventory database indicating a commitment quantity of a number of the products the supplier intends to ship to the RSC to meet the requested quantity. The supplier uses the accessed information to determine the commitment quantity to indicate.

As discussed, the cited Johnson discusses how the distributor, i.e., supplier, receives a product order from the customer local computer and confirms the order. The claims require different operations in that the supplier accesses information from the product record, including the requested quantity, and then determines a commitment quantity the supplier intends to submit using the accessed information. The claims require the supplier update the product record with the commitment quantity determined from the accessed information. Johnson, on the other hand, describes a process where a host computer at the distributor confirms a product order from the customer at the local computer in response to a requisition order from the customer.

Accordingly, independent claim 13 is patentable over the cited Johnson and Background Section.

Independent claim 18 recites a method for ordering products, wherein the products are supplied by a supplier to a replenishment service center (RSC), wherein an acquiring entity

obtains products from the RSC, comprising the RSC performing a sequence of computer related operations comprising: (i) performing computer related operations to access information in computerized inventory database including product records, wherein each product record indicates a specified product and a requested quantity that the acquiring entity wants to receive; (ii) performing computer related operation to receive a pull order from the acquiring entity for products provided by the supplier; (iii) performing computer related operations to update one product record in the inventory database with: information indicating products shipped to the acquiring entity in response to one pull order and information indicating products received from the supplier to satisfy a commitment quantity of a number of the products the supplier is shipping to the RSC to meet the requested quantity.

Applicants amended claim 18 to remove certain reference numbers.

The cited Background Section nowhere teaches or suggest an RSC performing any of the claimed operations, such as receiving a pull order from an acquiring entity and then updating one product record in an inventory database with information indicating products shipped to the acquiring entity in response to one pull order and information indicating products received from the supplier to satisfy a commitment quantity of a number of the products the supplier is shipping to the RSC to meet the requested quantity.

Further, the cited Johnson nowhere discusses operations performed by the RSC, where products are supplied by a supplier to the RSC and pulled by the acquiring entity. Further, nowhere does the cited Johnson anywhere teach or suggest an RSC updating one product record in an inventory database with information indicating products shipped to the acquiring entity in response to one pull order and information indicating products received from the supplier to satisfy a commitment quantity of a number of the products the supplier is shipping to the RSC to meet the requested quantity.

Accordingly, independent claim 18 is patentable over the cited Johnson and Background Section.

Independent claims 20, 32, and 37 substantially include the requirements of claims 1, 13, and 18 in system format and are thus patentable over the cited art for the reasons discussed with respect to claims 1, 13, and 18.

Independent claim 58 substantially includes the requirements of claims 1 and certain limitations of claim 18. Further, claim 58 additionally requires generating an invoice once the ordered products are delivered to the acquiring entity and confirmed by the supplier. Claim 58 is patentable over the cited art for the reasons discussed with respect to claims 1 and 18.

Claims 2-12, 14-17, 19, 21-31, 33-36, 38, 59-67, and 69 are patentable over the cited art because they depend from one of claims 1, 13, 18, 20, 32, 37, and 58, which are patentable over the cited art for the reasons discussed above. Moreover, the additional requirements of these claims provide further grounds of patentability over the cited art because the Examiner has not specifically cited any art as teaching or suggesting these additional claim requirements. If the Examiner maintains the rejection of these dependent claims, Applicants request that the Examiner cite to specific sections of the cited references that disclose the dependent claim requirements. See, 37 CFR 1.104(c)(2) ("When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable"); Manual of Patent Examination and Procedure (MPEP) Sec. 707, pg. 700-104 (8<sup>th</sup> ed., Rev. May 2004).

2. Claims 39-57 and 68 are Patentable Over the Cited Art

The Examiner rejected claims 39-57 and 68 as obvious (35 U.S.C. §103) over Johnson in view of Graves (Statutory Invention Reg. No. H1743). Applicants traverse for the following reasons.

Claim 39 requires a program for ordering products wherein the products are supplied by a supplier to a replenishment service center (RSC), wherein an acquiring entity obtains products from the RSC. The claims require a sequence of operations comprising: generating, by the acquiring entity, a request for a quantity of products; performing computer related operations to update a computerized inventory database with a product record including a requested quantity that the acquiring entity wants to receive of the product based on the generated order; performing computer related operations by the acquiring entity to process a request from the supplier for information on the requested quantity from the product record in the inventory database and transmitting the requested information to the supplier in response to the request; performing computer related operations to process information from the supplier indicating a commitment quantity of a number of the products the supplier intends to ship to the RSC to meet the

requested quantity, wherein the supplier uses the requested information to determine the commitment quantity to indicate; performing computer related operations to update the inventory database with the information received from the supplier to indicate the commitment quantity; performing computer related operations to update the inventory database from information received from the RSC indicating products shipped from the supplier for one specified product record to satisfy the commitment quantity; and transmitting, by the acquiring entity, a pull order to the RSC to ship products to the acquiring entity that the supplier shipped to the RSC to satisfy the commitment quantity.

Applicants note that although the Examiner rejected claims 39-57 and 68 as obvious in view of Graves and Johnson, the Examiner did not cite any sections of Johnson in his findings.

Graves discusses monitoring a storage tank and projects usage of chemicals stored in the storage tank. Based on the forecasts of the storage tank usage, Graves mentions that the processing unit 106 schedules and transmits purchase order releases to the chemical supplier. (Graves, col. 6, lines 36-55) Graves further discusses how the processing unit 106 can detect chemicals being added to the storage tank by monitoring the level of the tank, and then communicate receipt of the supplies to an accounting department to authorize payment of the delivered supplies. (Graves, col. 16, lines 4-22)

Claim 39 requires receiving information from a supplier indicating a commitment quantity of a quantity the supplier intends to ship, wherein the supplier uses requested information transmitted from the acquiring entity to determine the commitment quantity.

Although Graves discusses how a manufacturer orders supplies based on monitored usage of chemicals, the Examiner has not cited any part of Graves that teaches or suggests the claim requirement of receiving information from a supplier indicating a commitment quantity of a quantity the supplier intends to ship. Further, nowhere does the cited col. 16 anywhere teach or suggest that the supplier uses previously requested information transmitted from the acquiring entity to determine the commitment quantity. Instead, in Graves, the supplier supplies more chemicals in response to a purchase order release.

Applicants further submit that the Examiner has not cited any part of Graves that teaches the claim requirement of updating the inventory database from information received from the RSC indicating products shipped from the supplier for one specified product record to satisfy the commitment quantity after the commitment quantity is received.

The Examiner found that it would be obvious to involve an RSC in the claimed ordering process to accommodate an intermediary party. (Fourth Office Action, pg. 4). Even if one would be motivated to add a third party to a supply chain, nowhere does the cited art anywhere teach or suggest the specific claimed database operations to involve an RSC. For instance, there is no teaching suggestion in the cited art that teaches or suggests modifying Graves to perform the specific claim requirement of updating the inventory database from information received from the RSC indicating products shipped from the supplier for one specified product record to satisfy the commitment quantity previously indicated by the supplier.

Applicant's submit the Examiner's offered motivation to justify the modifications of the cited art, i.e., to accommodate an intermediary party, is too conclusory. The recent U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") decision in In re Lee, 61 USPQ2d 1430 (Fed. Cir. 2002) is particularly instructive as to why the Examiner's proposed modification of Graves is improper. In Lee, the Federal Circuit emphasized that it is essential that the decision to combine references "must be based on objective evidence of record". Id. at 1433. In Lee, the U.S. Board of Patent Appeals and Interferences (the "PTO Board"), whose decision was reversed in this case, took almost the identical position as the Examiner. The Patent Board in Lee said that there is no "need for 'any specific hint or suggestion in a particular reference' to support the combination". Id. at 1434. The Federal Circuit rejected such reasoning and said that authority is required and cannot be substituted with "[c]ommon knowledge and common sense,' even if assumed to derive from the agency's expertise." Id. 1435. The Federal Circuit said that this means that the Examiner cannot rely on conclusory statements of motivation. Id. at 1434. ("Conclusory statements such as those here provided do not fulfill the agency's obligation").

Thus, Examiner's conclusory statements as to the obviousness of the proposed modifications of the cited references are not sufficient.

For all the above reasons, Applicants submit that claim 39 is patentable over the cited Graves because the cited Graves does not disclose, teach or suggest all the claim requirements.

Claims 40-57 and 68 are patentable over the cited art because they depend from claim 39. Moreover, the additional requirements of these claims provide further grounds of patentability over the cited art because the Examiner did not cite specific sections of the cited art as teaching or suggesting the additional requirements of these dependent claims.



Conclusion

For all the above reasons, Applicant submits that the pending claims 1-69 are patentable over the art of record. Applicants submit that no additional fee is needed. Nonetheless, should any additional fees be required, please charge Deposit Account No. 09-0466.

The attorney of record invites the Examiner to contact him at (310) 553-7977 if the Examiner believes such contact would advance the prosecution of the case.

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